



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to obtain a return of their pet damage and security deposits pursuant to section 38 of the *Act*.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:53 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. The tenant and her advocate attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant, her advocate and I were the only ones who had called into this teleconference.

Preliminary Issues to be Decided

Does any portion of the tenant's application fall within the jurisdiction of the *Act*? If so, has the landlord been adequately served with notice of this dispute resolution hearing and the tenant's application for dispute resolution?

Preliminary Issue- Background and Evidence Regarding Jurisdiction to Consider the Tenant's Application

Before I can make any decision regarding an application for dispute resolution, I must be satisfied that the matter falls within the jurisdiction of the *Act*.

In this case, the tenant has supplied written evidence and sworn testimony that there have been a number of different phases to their interaction with the landlord.

Initially, the tenant and a co-tenant signed a one year fixed term Residential Tenancy Agreement with the landlord on September 30, 2016, for a tenancy that was to include the tenant's residency in the landlord's three bedroom manufactured home on an acreage property. This fixed term was to run from October 1, 2016 until October 1, 2017.

In a January 30, 2017 decision of an Adjudicator appointed pursuant to the *Act* (see decision noted above), an Order of Possession was issued to the landlord. The tenant provided written evidence that the landlord obtained a Writ of Possession from the Supreme Court of B.C. on February 20, 2017. The tenant maintained that the landlord reinstated the existing tenancy on March 23, 2017, when the landlord accepted their payment of outstanding rent and made arrangements with the co-tenants to restore Shelter Assistance Payments from the Ministry of Social Development and Poverty Reduction on the tenants' behalf.

The advocate entered into written evidence documents to demonstrate that the court-appointed bailiff hired by the landlord to obtain the Writ of Possession returned that unexecuted Writ to the Court Registry Office on May 26, 2017, noting on the Writ that it was being returned as it had not been executed.

The advocate provided written evidence confirmed by the tenant's sworn testimony that the tenant and her co-tenant paid the agreed \$1,200.00 in monthly rent for April 2017. However, at some point in April 2017, the two tenants entered into an oral agreement with the landlord whereby the landlord would be allowed to stay in one of the three bedrooms in the manufactured home "from time to time" in exchange for a \$400.00 reduction in the rent the tenants were paying. This oral agreement which took effect as of May 1, 2017 changed the monthly rent from \$1,200.00 to \$800.00. The advocate's written evidence and the tenant's sworn testimony stated that the tenants cleared out their belongings from one of the bedrooms in this home so as to enable the landlord to have exclusive access to that room in accordance with their oral agreement. At the hearing, the tenant confirmed that there is only one kitchen and bathroom in the manufactured home. The written evidence and sworn testimony from the tenant

confirmed that the landlord only stayed overnight in the manufactured home once from May 1, 2017 until July 19, 2017.

The tenant maintained that the landlord and the same court appointed bailiff who had acted on the landlord's behalf earlier in this process evicted the tenant and the co-tenant from the manufactured home on July 19, 2017, using a copy of the original Writ of Possession, which did not show that the original had been returned to the Court Registry Office unexecuted.

The tenant applied for a monetary award of \$7,859.90 for losses arising out of this tenancy, which included the return of their security and pet damage deposits.

Preliminary Issue - Analysis of Jurisdiction to Consider the Tenant's Application

Section 4(f) of the *Act* states that "This *Act* does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation."

On the basis of the undisputed evidence provided by the tenant, there are three separate phases to this tenancy.

The first phase ran from October 1, 2016 until the 2 Day Order of Possession was to take effect following the January 30, 2017 decision by the Adjudicator.

The second phase lasted from March 23, 2017 until April 30, 2017, a period when there is undisputed evidence that the original tenancy agreement had been reinstated by the landlord's acceptance of outstanding rent and the payment of rent for March and April 2017. I find that I have jurisdiction to consider the tenant's claims relating to losses arising from interactions with the landlord until April 30, 2017, including any request for the return of their security and pet damage deposits for that tenancy.

As of May 1, 2017, the tenant has provided undisputed sworn testimony and written evidence that a new oral agreement was reached between the landlord, the tenant and the co-tenant. This new contractual arrangement enabled the landlord, the owner of this property, to share space with the two co-tenants, and in the process reduce their rent by one-third. Since there is no other bathroom or kitchen in this manufactured home and even though the landlord only ended up staying there for a very short period of time, this was an arrangement whereby the landlord was sharing the living space, including the bathroom and kitchen with the two co-tenants. Due to this agreement

which included the sharing of common areas of the rental unit, including the bathroom and kitchen, I have no jurisdiction to consider those aspects of the tenant's claim for a monetary award for the events that pertain to the contractual agreement that the tenant entered into with the landlord that took effect on May 1, 2017.

Preliminary Issue- Service of Tenant's Dispute Resolution Hearing Package

Since the issue of the return of the security and pet damage deposits relate to the previous tenancy, I have jurisdiction to consider the tenant's request to have these deposits returned by the landlord.

The tenant's advocate gave undisputed sworn testimony that a copy of the tenant's dispute resolution hearing package was sent on August 21, 2018 to the landlord at the address identified on the original tenancy agreement with him in September 2016. The advocate testified that this package was returned as unclaimed. The advocate testified that a second package, this time also including copies of the tenant's written evidence, was sent to the landlord at the same address on November 30, 2018, 14 days before this hearing. The advocate said that Canada Post's Online Tracking System reveals that this package was redirected to some other address for the landlord, as the landlord is apparently no longer residing at the address provided in the September 2016 tenancy agreement. The advocate said that this second package has not been successfully delivered to the landlord. The advocate provided the Canada Post Tracking Numbers for both of these registered mailings.

Service by registered mail is one of the methods available by which a tenant may serve a landlord with a copy of their dispute resolution hearing package including notice of the hearing in accordance with section 89(1) of the *Act*. While the tenant and their advocate have attempted to serve the landlord at the last known address they had for the landlord, the tenant admitted that she had no contact with the landlord for 16 1/2 months before this hearing. When the registered mailing of the initial dispute resolution hearing package was returned by Canada Post, the tenant and their advocate sent another package also containing written evidence. After checking Canada Post's Online Tracking System, they discovered that the landlord is no longer at the original mailing address and his mail is apparently being forwarded somewhere else.

Under these circumstances, I am not satisfied that the tenant's dispute resolution hearing package, written evidence and notice of this hearing has been adequately served to the landlord at a recent address. I advised the tenant and her advocate that I was dismissing the part of her application that pertains to the tenancy that was in place

until April 30, 2017, including the return of deposits paid to the landlord prior to that time, with leave to reapply.

I also advised the tenant that if she had not already done so, she should consider providing the landlord with a forwarding address in writing where the landlord could return the security and pet damage deposits from her tenancy.

Conclusion

I decline to make a finding regarding those aspects of the tenant's application that pertain to the contractual arrangement between the tenant and the landlord that took effect on May 1, 2017, as I have no jurisdiction under the *Act* to consider those issues.

I dismiss the tenant's application for a monetary award for losses arising out of the tenancy that was in place until April 30, 2017, including the tenant's application to recover the security and pet damage deposits paid to the landlord, with leave to reapply. Leave to reapply does not extend the time frames for submitting applications or taking actions set out in the *Act*.

In the event that the tenant does send a written request to the landlord for the return of their security and pet damage deposit to the tenant's forwarding address, the tenant should retain a record of such a request, which may include a record of a registered mailing to the landlord's address or a witnessed proof of service directly to the landlord.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 14, 2018

Residential Tenancy Branch